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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GALE SOSTEK; and HERB SOSTEK

Plaintiffs,

vs.

COUNTY OF SAN BERNARDINO;
SAMUEL FULLER; and DOES 2-10,
inclusive,

Defendants.

) **Case No.: 5:23-cv-02236-MRA-MRW**

) [*Hon. Monica Ramirez Almadani*]

) **JOINT CASE MANAGEMENT
STATEMENT**

COME NOW ALL THE PARTIES JOINTLY AND STATE AS FOLLOWS:

The parties herewith submit this Joint Case Management Statement pursuant to the Court's Order Reassignment Order (Doc. 30).

A. The date the case was filed

October 30, 2023.

B. A list identifying or describing each party

1
2 The Plaintiffs are Decedent Kyle Sostek's legally adoptive parents Herb and
3 Gail Sostek. Defendants are the County of San Bernardino and Samuel Fuller.

4 C. A brief summary of all claims, counterclaims, crossclaims,
5 or third party claims

6 Per Plaintiffs:

7
8 Plaintiffs' Complaint contains the following claims: Unreasonable Search
9 and Seizure—Excessive Force (42 U.S.C. § 1983); Unreasonable Search and
10 Seizure—Denial of Medical Care (42 U.S.C. § 1983); Substantive Due Process—
11 (42 U.S.C. § 1983); Battery (Survival and Wrongful Death); Negligence (Survival
12 and Wrongful Death); and Violation of Bane Act (Cal. Civil Code § 52.1).

13
14 Per Defendants:

15 Defendants have not filed a counterclaim or crossclaim.

16
17 D. A brief description of the events underlying the action

18 On or about March 12, 2023, Kyle Sostek, Decedent, was fatally shot by
19 Samuel Fuller of the County of San Bernardino Sheriff's Department at or near the
20 800 Block of Vista Ave., in Sugarloaf (Unincorporated BigBear), California.
21 Decedent died as a result of his gunshot wounds.

22
23
24 E. A description of the relief sought and the damages claimed
25 with an explanation of how damages have been (or will be) computed
26
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1 Plaintiffs seek damages in excess of \$5,000,000. These damages include
 2 Decedent's pain and suffering damages before death, loss of enjoyment of life,
 3 wrongful death damages, punitive damages and statutory attorney's fees.

4
 5 F. The status of discovery, including any significant discovery
 6 management issues, as well the applicable cutoff dates

7 The parties have propounded and responded to multiple sets of written
 8 discovery and have subpoenaed various documents. No depositions have been
 9 taken to date.

10 Fact Discovery Cut-Off- 08/23/2024

11 Expert Disclosure (Initial) - 09/06/2024

12 Expert Disclosure (Rebuttal)- 09/20/2024

13 Expert Discovery Cut-Off- 09/20/2024

14
 15 G. A procedural history of the case, including any previous
 16 motions that were decided or submitted, any ADR proceedings or settlement
 17 conferences that have been scheduled or concluded, and any appellate
 proceedings that are pending or concluded

18 Plaintiffs filed their Complaint, the County filed an Answer, Plaintiffs filed a
 19 First Amended Complaint adding shooting Deputy Samuel Fuller. No answer has
 20 been filed by the County or Deputy Fuller to the First Amended Complaint. The
 21 County of San Bernardino's responsive pleading to the First Amended Complaint
 22 shall be due within 21 days of service of the First Amended Complaint. Defendant
 23 Samuel Fuller's responsive pleading to the First Amended Complaint shall be due
 24 within 21 days of service of the Summons and First Amended Complaint (Dkt. 32).

25 Scheduling Conference Deadline- 12/04/2024.

26 There are no previous motions, settlement conferences or appellate
 27 proceedings.

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2
3 H. A description of any other deadlines in place before reassignment

4 The Court had already issued a scheduling order (Doc. 22-1), attached
5 hereto.
6

7 I. Whether the parties will consent to a magistrate judge for trial

8 Parties will not consent.
9

10 J. A statement from each parties' counsel indicating they have
11 (1) discussed the magistrate judge consent program with their
12 respective client(s), and (2) met and conferred to discuss the consent
13 program and selection of a magistrate judge

14 Plaintiffs' counsel has discussed the magistrate judge consent program with
15 their respective clients and met and conferred to discuss the consent program and
16 selection of a magistrate judge.

17 Defense counsel has discussed the magistrate judge consent program with
18 their clients and met and conferred to discuss the consent program and selection of
19 a magistrate judge.
20

21 K. Whether there exists an immediate need for a case management
22 conference to be scheduled in the action and, if so, why the parties believe such a
23 need exists.

24 Plaintiff:

25 Not on behalf of Plaintiffs. Plaintiffs are opposed to staying the entire civil
26 proceedings pending any DOJ investigation. However, Plaintiffs would agree to
27 temporarily postpone seeking to take Defendant Fuller's deposition and not
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1 propounding any written such as special interrogatories and requests for
2 admissions (not requests for production of documents), while the DOJ's
3 investigation remains pending, so as to avoid any potential Fifth Amendment
4 infringement issues with Mr. Fuller. Further, discovery should be allowed to
5 continue as to everyone other than Defendant Fuller, including against the
6 Defendant County, any percipient witnesses, including any non-shooting deputy
7 witnesses (there was one at the scene at the time of the shooting), while any DOJ
8 investigation is pending. Moreover, a lot of these DOJ investigations can take well
9 over a year to conclude so with the deadlines set by the Court and in the interest of
10 justice, at some point, regardless if the DOJ investigation has concluded, Plaintiffs
11 should be able to proceed with full discovery.

12 Defendants:

13 Yes, on behalf of Defendants. Defendant Samuel Fuller intends to move to
14 stay the civil proceedings if Plaintiffs will not stipulate to stay the proceedings.
15 Defense counsel has only recently been engaged to represent Defendant Samuel
16 Fuller. Pursuant to California Assembly Bill 1506, the California Department of
17 Justice ("DOJ") is required to investigate all incidents of an officer-involved
18 shooting resulting in the death of an unarmed civilian. The California DOJ
19 investigates and reviews for potential criminal liability on all such incidents. There
20 is an on-going investigation of Defendant Samuel Fuller by the California DOJ.
21 During the pendency of the investigation Deputy Samuel Fuller's Fifth Amendment
22 rights are implicated. Defense counsel for Deputy Samuel Fuller in the DOJ
23 Investigation has informed Defense counsel in this matter that he will instruct
24 Deputy Samuel Fuller to invoke his Fifth Amendment rights in the Civil matter
25 during the pendency of the investigation and criminal proceeding, should one
26 commence. Defendants oppose implementing the stay only for Defendant Fuller,
27 on the grounds it will severely impair the County's ability to defend itself from the
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1 claims if the involved deputy is prevented from answering discovery or
2 participating in the trial.
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6 DATED: March 18, 2024

LAW OFFICES OF DALE K. GALIPO

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8
9 By /s/ Eric Valenzuela

10 Dale K. Galipo

Eric Valenzuela

11 Attorneys for Plaintiffs
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14 Dated: March 18, 2024

WESIERSKI & ZUREK LLP

15 By:

16 /s/ Michelle R. Prescott

17 Michelle R. Prescott

18 Attorneys for Defendants
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